Preparing Supervisors & Managers for Mediation

Welcome

- **On-line mediation training provides information for supervisors and managers and promotes awareness of their role when participating in a workplace mediation through the Alternative Dispute Resolution (ADR) Program.**

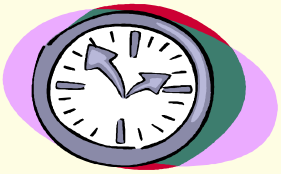
- **Although there are various forms of ADR, mediation is the Department of Navy's (DON) primary ADR process used for issues involving workplace disputes.**

- **Human Resources Office, Norfolk provides mediation services for your command through HEAR (Helping Employers/Employees Alternatively Resolve) Workplace Disputes ADR Program.**

NOTE: Use of mediation through HEAR Workplace Disputes ADR Program is subject to any collective bargaining agreement obligations that local unions and activities have in place.

On-Line Training

- **30 minutes.**



- **Quiz at end.**

- **On-line program advances automatically or you can manually advance the training with the page down key.**

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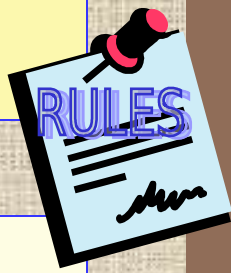
ADR Policy & Guidelines



- **SECNAVINST 5800.13a:**
  - **ADR techniques shall be used as an alternative to litigation or formal administrative procedures to the maximum extent practicable.**
  - **The goal is to resolve disputes and conflicts at the earliest stage feasible, by the fastest method possible and at the lowest possible organization level.**
  - **Every conflict and issue in controversy, regardless of the subject matter, is a potential candidate for ADR.**
  - **All personnel will consider and encourage the use of ADR to resolve conflicts and issues in controversy.**
- **Civilian Human Resources Manual, Subch**
  - **ADR is appropriate for all workplace d**
    - **Not limited to EEO**
    - **Used for admin & negotiated grie**
    - **Used for ULPs, MSPB, OSC dispu**

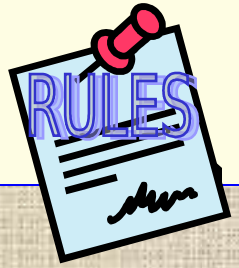
ADR Policy & Guidelines
(continued)

Administrative Dispute Resolution Act of 1996:

- **Congress finds that administrative procedures are intended to offer a prompt, expert, and inexpensive means of resolving disputes as an alternative to litigation.**

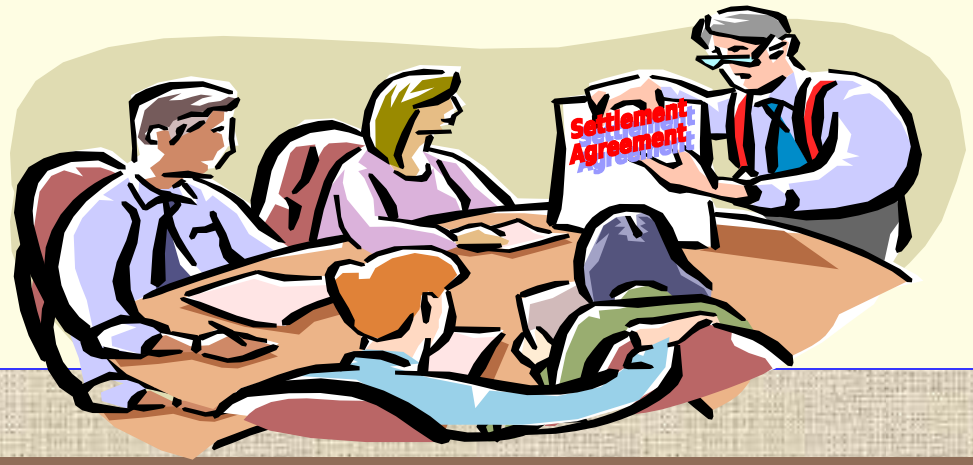
- **Department of Defense Directive (DOD) 5145.5:**
  - **Establishes a framework for encouraging the expanded use of ADR within the DOD.**

- **Equal Employment Opportunity Commission (EEOC) 29 Code of Federal Regulations 1614.102(b)(2):**
  - **Every agency is required to establish or make available an ADR Program.**



Mediation Defined

• **Mediation is a voluntary, collaborative, problem-solving ADR process which is non-adversarial in nature. Mediation seeks not to declare winners or losers but to find reconciliation between disputing parties through the use of a trained, neutral mediator. The parties discuss possible resolutions for the purpose of reaching a mutually acceptable agreement of their own making thereby avoiding a decision handed-down by a third party, such as an administrative judge.**



Why Mediate?

- **Mission accomplishment is the driving factor in virtually every effort to systematically manage conflict. Statistics from professional sources indicate that managers spend between 19% and 31% of their time dealing with workplace conflict. Attempting to resolve conflict during the earliest stages allows you as the manager to keep focused on your organizational goals. If you become involved in a dispute with an employee, another manager, or other colleague, mediation can help resolve issues in a private, inexpensive, and timely manner, [illegible] back to the job of accomplishing your**

- **Mediation enhances the possibility of creating a "win-win" solution. Parties have maximum opportunity to freely express their interests and gain an understanding of the full scope of the problem which allows the parties to make a more informed decision about resolution.**

Why Mediate?
(continued)

- **During a mediation the parties focus on their long-term working relationships rather than on traditional, adversarial processes that are:**
  - **Long and drawn out, sometimes lasting for years. Problems addressed early-on through mediation prevent the growth of animosity and deterioration of the working relationship.**
  - **Costly in terms of time spent and money required to process.**

  - **Forums where decisions are decided by "outsiders" such as administrative judges who can not fully understand the workplace dynamics behind the conflict or have the legal leeway to creatively design resolution options.**

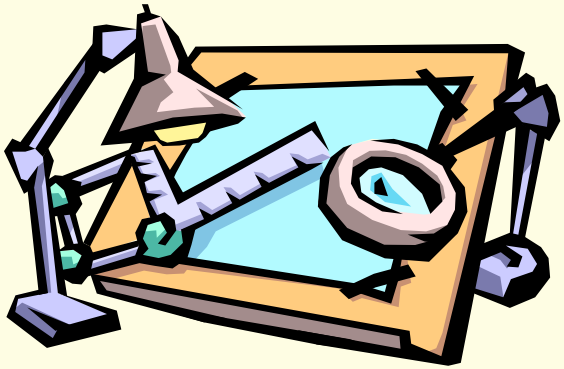
Why Mediate?
(continued)

• Besides and unresolved conflict can create:

- Uncomfortable working environments.
- Long-term damage to working relationships.
- Poor morale.
- Low productivity.
- Inferior customer relations.
- Stress and/or illness.
- Absenteeism.
- Destructive situations.
- Loss of an employee who performs an essential function.
- Rehiring/retraining costs.

Mediation Program Design

- **HEAR Workplace Disputes ADR Program follows DON governing guidelines.**



- **Self determination is the main principle of DON's Mediation Program in that mediation relies upon the parties' ability to reach a voluntary, uncoerced agreement. Self-determination sets forth the parties' right to determine the outcome of the mediation and decide when and under what conditions they will reach an agreement or terminate the process. Other core principles of the Program include voluntariness, confidentiality, and use of facilitative negotiation.**

Mediation Program Design
(continued)

- **The mediation process is designed for all types of workplace conflicts including issues involving Equal Employment Opportunity (EEO), grievances, appeals, and labor management (as defined by collective bargaining agreement (CBA) language). Statistics indicate that when parties agree to mediate early-on, prior to pursuing these more formal forums, there is a greater opportunity for resolving the dispute.**

- **Commands determine on a case-by-case basis conflicts that are appropriate for mediation. Commands also determine the name of the manager that will participate in the mediation. The selected manager must have the authority to resolve the disputed issues and sign a settlement agreement on behalf of the command. Occasionally, resol discussions go beyond the participating ma hority and the mediator will ask the manager to c predetermined higher-level official who can cision on the terms under discussion.**

Mediation Program Design
(continued)

- **Representatives, such as a personal representative, union official, or attorney, can attend and participate in the mediation on behalf of the command and the employee. Although the primary role during a mediation belongs to those parties personally involved in the conflict, representatives can enter into discussions, ask questions, clarify issues of concern, and raise options for resolution.**

- **A subject matter expert will be available during the mediation to provide procedural and regulatory information to the parties. Generally, the subject matter expert is a human resource specialist.**

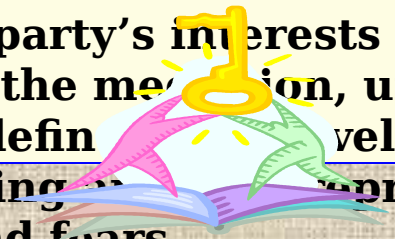
- **If resolution is reached during the mediation, a written agreement is drafted by the parties. If resolution is not reached during the mediation, parties are free to pursue their dispute, but they are bound by any time limits set by the formal administrative process.**

Preparing to Mediate--Key to Successful Outcomes

• When you prepare for the mediation beforehand, you are equipped to make better decisions, more comfortably, and more quickly. Talk with your agency representative (either a Labor Relations Specialist from HRO Norfolk or command counsel, when assigned) about a "game plan" prior to participating in mediation.

• Plan your opening remarks with comprehensive, well-reasoned thoughts and avoid speculation. What is the logical explanation for the conflict that supports the facts as you know them? If there is documentation that supports your thoughts about the conflict, you can bring it to the mediation.

• Identify your interests in the order of importance and anticipate the other party's interests and order of importance. During the mediation, underlying interests of both parties will be defined and developed. Interests are *why* we want something and represent our basic needs, desires, concerns, and fears.



Preparing to Mediate--Key to Successful Outcomes
(continued)

- **Develop a strategy to achieve resolution that includes trade-offs that could appeal to the other party. Identify things that are easy for you to give that may be valuable for the other party to receive. When you consider mission, resources, and morale, could a smaller commitment on behalf of the command now prevent a larger commitment later on?**

- **Brainstorm with your agency representative ideas that allow both the command and the other party to gain something. Now is the time that you have the freedom and the opportunity to be creative--creativity that formal administrative processes don't permit. Think about resolution possibilities that may be agreeable to everyone. What are some non-monetary benefits that could lead to resolution? You're not committed to any action until the settlement agreement is signed by both parties.**

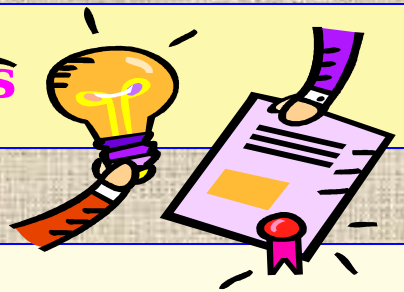
- **Are there resources beyond your supervisory authority that would be obligated when fulfilling the terms of a settlement agreement? Contact the person who has authority over**

Preparing to Mediate--Key to Successful Outcomes
(continued)

- **Be prepared to answer the question, what can I do differently beginning tomorrow to improve our working relationship.**

- **Weigh the importance of resolving the conflict by asking:**
  - **What is the *worst* alternative to reaching settlement, i.e., what is the worst thing that can happen if the case is *not resolved* during mediation?**
  - **What is the *best* alternative to reaching settlement, i.e., what is the best thing that can happen if the case is *not resolved* during mediation?**
  - **Then ask…do either of these alternatives make early resolution more attractive?**

Mediation Tips



- **Listen actively.**
  - **This is an extremely important part of mediation. Listening actively means not only listening to what another person is saying with words, but to what is being said by nonverbal language. Be aware of yours and the other party's tone of voice, gestures, and facial expressions. Statistics indicate that 55% of communication is body language, 38% of communication is tone of voice, and 7% of communication is the actual spoken word. Ask clarifying questions such as "Tell me more." "Go on." "How do you feel about that?" The active listening process also involves letting the speaker know that he/she has been heard, e.g., "What I heard you say is...."**

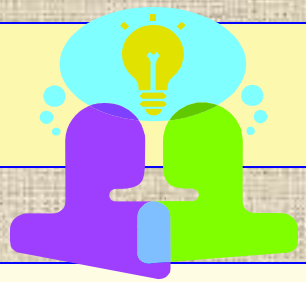
- **Accept responsibility.**
  - **Conflict is multi-faceted and there is enough responsibility to go around. Attempting to place blame only creates resentment, anger, and heightens existing problems that further deteriorate the relationship. Progress toward resolution is made when parties accept**

Mediation Tips
(continued)

- **Use direct communication.**
  - **As the age-old adage goes, say what you mean and mean what you say. Be sincere and avoid "hiding the ball" by talking around a problem or setting up a smoke screen. The best way to accomplish this is to use "I-Messages" rather than "you-messages." With an "I-Message," you express your wants, needs, and concerns. "I-Messages" are a clear and non-threatening way of saying what you want and how you feel. Whereas, "you-messages" suggest that the other person is at fault.**

- **Think before reacting.**
  - **During conflict there is a tendency to think that you must react immediately or lose the opportunity to speak. It is important to stay centered by thinking before speaking and resisting a knee-jerk reaction. Take some time to consider what you are going to say and weigh how you are going to say it. Try not to take confrontation personally or play negative tapes in your head.**

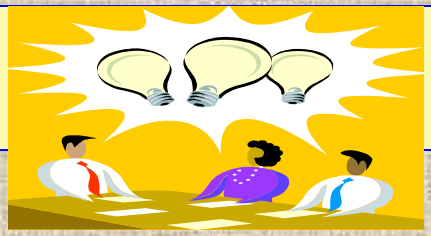
Mediation Tips
(continued)



- **Attack the problem…not the person.**
  - **– Separate the person from the problem by being hard on the problem and soft on the person. Conflict is very emotional and when emotions are high it is easier to attack each other rather than concentrate on solving the problem. Be persuasive but don't threaten, ridicule, or demean the other person or his/her case. Set a tone of collaboration by moving beyond the emotional symptoms of the conflict to uncover the root cause of the problem. Build off of each other's ideas so they become a joint effort toward resolution. Look for common ground and be willing to concede less important issues to gain momentum toward reaching resolution.**

- **Focus on the future.**
  - **– For the parties to have a clear picture of all issues, it is important to understand the dynamics of the relationship including the history behind the conflict. After the parties have had time to talk about what happened in the past, the mediator shifts the parties' focus to the future for that is where the solution to the**

Mediation Tips
(continued)

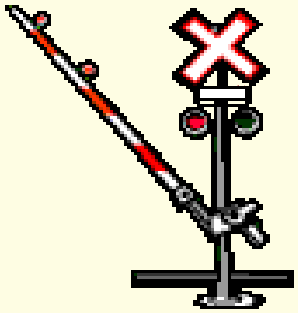


- **Value diversity and differences in thinking.**
  - **– Be tolerant of the other person's opinions and take his/her concerns seriously. Consider the strong points of their case and how that reflects on the strength of your case. It is okay to disagree as long as you've put forth a good faith effort during the mediation and given resolution your best try. Even if settlement isn't reached, the working relationship could benefit as result of your willingness to meet and talk about the conflict.**

- **Remain flexible.**
  - **– You won't have the whole picture until all views of the conflict are discussed, so be flexible and willing to consider how new information learned during the mediation may alter your opinion and point of view.**

Barriers to Resolution

- **Attacking.**
- **Interrupting.**
- **Aiming your comments solely at the mediator rather than the other party.**
- **Erecting obstacles to settlement.**
- **Unrealistic expectations.**
- **Lack of professionalism.**
- **Rigidity.**
- **Poor listening skills.**
- **Language barriers.**
- **Defensiveness.**
- **Allowing your legal position to overshadow resolution attempts.**
- **Inaccurate assumptions.**
- **Inability or no desire to understand the other person's interests.**
- **Attaching blame.**
- **Labeling the other person as unreliable or unreasonable.**



What About the Mediator?

- **There is no universal answer to what makes a competent mediator. No particular type of job experience has been shown to predict success as a mediator. Successful mediators come from many different backgrounds. Competence depends partly on the right mix of acquired skills, training, experience, and natural abilities. Mediator skills include neutrality, ability to actively listen and communicate, ability to clarify issues, patience, empathy, honesty, creativity, professional demeanor, problem-solving skills, ethical behavior, and flexibility.**

- **HEAR Workplace Disputes ADR Program provides your command with DON certified mediators who will:**
  - **Conduct the mediation in an impartial and even-handed manner.**
  - **Support the parties' right to self-determination in deciding the outcome of the mediation.**
  - **Not label or place blame on the parties.**
  - **Open avenues of communication by facilitating discussions between parties.**

What About the Mediator?
(continued)

– Not provide legal advice or offer a solution for the conflict.

–Adhere to the rules of confidentiality under the Administrative Dispute Resolution Act of 1996. Exceptions to confidentiality are fraud, waste and abuse, criminal activity, or intent to do bodily harm. Mediators will terminate the mediation if any party reveals these and the matter will be reported.

– Disclose all actual and potential conflicts of interest reasonably known.

– Mediate only when the necessary level of competence is acquired that satisfies the reasonable expectations of the parties.

– Encourage the parties to look beyond their legal positions to identify underlying interests.

What About the Mediator?
(continued)

- **Not willingly testify for either party if the matter is not resolved and the parties move into a formal process.**

- **Will ask "who" "what" "when" "where" type questions when the parties are writing the settlement agreement to ensure that it is clearly written and understood by the parties.**

Caucus

- **You and the agency representative (if present) will meet at least once with the mediator in a separate meeting called a caucus. The caucus reduces a significant barrier to settlement because it eliminates direct confrontation with the other side. Any information that you ask the mediator to hold confidential during the caucus will not be revealed to the other party.**

- **You will have an opportunity to further discuss your interests. The mediator will ask what you believe is a reasonable offer of resolution and additional options will be explored.**

- **The mediator may discuss the other party's views about the dispute as long as it is not in violation of confidentiality.**

EEO Settlement Agreement

- **An EEO settlement agreement is a contract:**
  - **The Equal Employment Opportunity Commission (EEOC) regulations state that any settlement agreement knowingly and voluntarily entered into by the parties is binding and enforceable and the terms agreed to will be interpreted like those of any contract. The employee who has filed an EEO complaint agrees to withdraw his complaint under the terms of a settlement agreement.**

- **Avoid a breach:**
  - **If one party fails to meet the terms indicated in the settlement agreement, the EEOC can enforce the settlement agreement or reinstate the original EEO complaint. You could later be directed by the EEOC to prove you met the exact terms of the settlement agreement.**

EEO Settlement Agreements
(continued)

- **Avoid ambiguous language:**
  - **The language of the settlement agreement should be specific and straightforward. To avoid confusion and the possibility of different interpretations, remember to address the four "*W*'*s*": *W*ho, *W*hat, *W*hen, *W*here, as applicable.**

- **Customize the language:**
  - **Parties can be creative and flexible when drafting the language of a settlement agreement, so long as it does not violate law or regulation.**

- **Agree only to what you have control over:**
  - **Don't promise anything or obligate someone outside your authority without first getting approval that what your about to agree to can be accomplished.**

EEO Settlement Agreement
(continued)

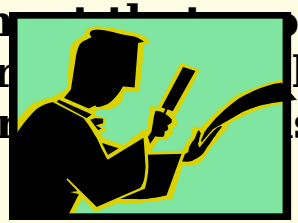
- **Establish a range of possibilities:**
  - **Prior to the mediation, consult your representative and establish a range of possibilities for settlement. Be flexible and willing to make adjustments and changes based on new information learned during the mediation.**

- **Consider other party's objectives:_**
  - **How can the settlement agreement be fashioned to be mutually agreeable? Can a solution be "built" taking into account both parties' objectives?**

- **Spare legal terms:**
  - **Generally, avoid the use of legal terms. If legal terms are used, be sure you are using them properly. Your agency representative can provide appropriate guidance.**

EEO Settlement Agreement
(continued)

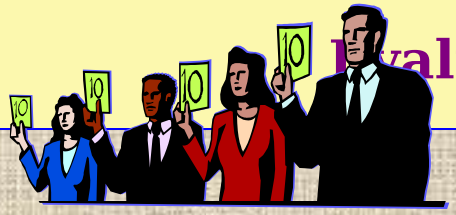
- **Set forth a benefit:**
  - **A valid settlement agreement must be based upon consideration which means that both parties must give consideration for a contract to be enforceable. Consideration is a right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility, given, suffered or undertaken by the other. The EEOC has held that terms of a settlement agreem[illegible]vide no more than the command is requir[illegible]law render the settlement agreement void for[illegible]sideration.**



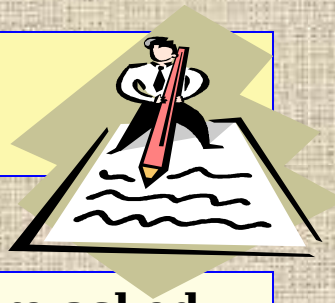
- **Seek advice:**
  - **The parties have the right to have the settlement agreement reviewed before signing it.**
- **Continue with formal process:**
  - **If agreement is <u>not</u> reached, can continue in EEO process.**

Workplace Dispute
Memorandum of Understanding

- **Not all mediations involve the DON as a party in the dispute. For example, if if a manager has two employees who for non-discriminatory reasons are in conflict, the manager can offer mediation to the employees. These types of mediations where individual employees try to resolve their conflict are called workplace dispute mediations or peer-to-peer mediations, and they have a crucial distinction only in the context of writing the resolution. Since neither employee technically represents the DON at the mediation, any agreement reached cannot bind the Agency. Resolutions for these types of mediations are generally captured in a Memorandum of Understanding (MOU) between the parties rather than a settlement agreement. If the conflict is not reso[illegible] the parties are free to pursue an administrative proc[illegible]**

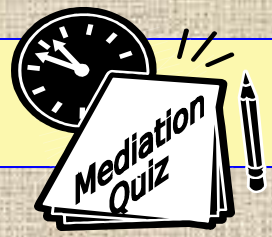


Evaluations / Assessments



- **At the conclusion of the mediation, participants are asked to complete an evaluation / assessment which is forwarded to DON's ADR Workplace Dispute Program Manager.**
- **Responses compiled by DON indicate:**
  - **4 out of 5 participants would "recommend mediation to others" and were "satisfied with the process."**
  - **Even if no settlement agreement was reached, 3 out of 4 participants say outcome was "best for my situation."**
  - **7 out of 10 say it "will improve relationships in my workplace."**
- **Comments written on HEAR Workplace Disputes ADR evaluations include:**
  - **"…allowed me to see exactly how the problem came about."**
  - **"…highly recommend ADR to others."**
  - **"Great venue for resolving issues!"**
  - **"Looking forward to working with employee to improve workplace."**
  - **"The mediator was excellent and brought to light things**

Quiz



1. What is the primary ADR process used by DON for workplace disputes?

Mediation

2. What are the main points of SECNAVINST 5800.13a?

a. ADR should be considered for all types of conflicts so disputes can be resolved at the earliest stage, the fastest method, and the lowest level.

b. All DON personnel shall encourage the use of ADR as an alternative to litigation and formal administrative procedures to the maximum extent practicable.

3. True or False: Mediation is similar to litigation.

False. Mediation is a collaborative, problem-solving ADR process where parties have control of resolution. Litigation involves a decision based on law made for the parties by a third person, trier-of-fact.

4. Name types of disputes that can be mediated.

a. Issues involving EEO, grievances, appeals, and labor management (IAW CBA).

b. Any other workplace issue determined appropriate for mediation by the command and employee.

Quiz
(continued)

5. What are the advantages of using mediation for workplace disputes?

   Saves time and money; supports mission accomplishment; enhances employees' morale; promotes customer satisfaction; improves working relationships and working environment.

6. How do you prepare for a mediation?

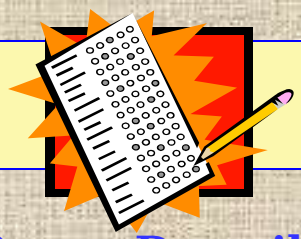
   Discuss the case with your agency representative; know the facts and plan your opening remarks; identify your interests and anticipate the other party's interests; think creatively and brainstorm resolution possibilities; determine if there is another organizational component that would be obligated under the terms of any settlement agreement.

7. Name effective mediation tips.

   Be aware of nonverbal language; look at the conflict from the other person's perspective; take responsibility for any role you may have had in the conflict; use direct communication; focus on the future; separate the person from the problem; stay centered and think before reacting to emotions; build on the other person's ideas; remain open-minded and flexible.

8. What are barriers to resolution?

   Attacking, interrupting, unrealistic expectations, poor listening skills, defensiveness, no desire to understand, rigidity, blaming, labeling.



Quiz
(continued)

9. Describe the most fundamental principle of DON's mediation program.

   Self determination is the most fundamental principle of mediation. It requires that the mediation process rely upon the parties ability to reach a voluntary, uncoerced agreement.

10. What is the role of a subject matter expert?

    A subject matter expert provides procedural and regulatory information to the parties during the mediation.

11. What role do representatives play in a mediation?

    Representatives can discuss the dispute, ask questions, and suggest options for resolution; however, their role is secondary to that of the parties who are personally involved in the conflict.

12. Name disadvantages of traditional litigation procedures.

    Long, drawn out, expensive, and decisions made by someone who does not have a vested interest in the working relationship of the parties.

13. True or False: DON mediators provide advice and make decisions for parties.

    False. DON mediators do not provide solutions, offer advice, or make decisions for the parties. Mediators facilitate discussions, ask questions, and assist the parties in considering all options for resolution.

Quiz
(continued)

14. Define caucus.

A caucus is a separate meeting with the mediator for the purpose of discussing confidential issues, addressing settlement options, and avoiding confrontation with the other party.

15. What is the mediator's role relating to settlement agreements?

The mediator will ask "who" "what" "when" "where" type questions so the terms of the settlement agreement are clearly written and understandable by all parties.

16. True or False: An EEO settlement agreement is enforceable and binding upon the parties.

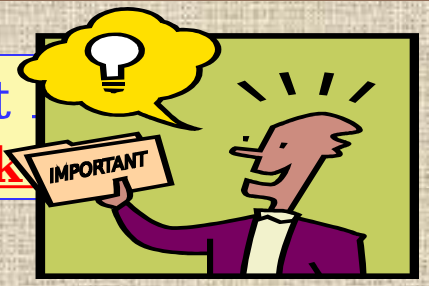
True. The terms agreed to will be interpreted like those of any contract.

17. What is meant by the term consideration when referring to an EEO settlement agreement?

Consideration is a right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given by the other party.

Most Important

* Please print and keep on hand as a quick



Here, in a nutshell, are the most important points of the on-line training.

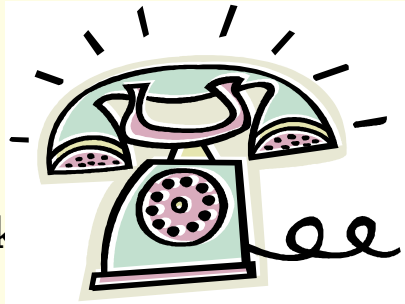
1. **Responsibility…DON requires ADR to be considered and encouraged for every conflict.**
2. **Mediation process…voluntary; collaborative; problem-solving communication tool; does not declare winners or losers; relies on the chief principle of self-determination; parties can continue with dispute if no resolution is reached.**
3. **Before mediation…plan your opening remarks; brainstorm with the agency representative possible resolutions; define your interests and think about employee's interests; identify what you can give that's valuable for the employee to receive; don't commit other organizational areas without contacting them; identify small commitments now that may pr larger commitments later on; consider if com best interest is served with early resolution rather than waiting possibly years for a decision through the litigation process.**

Most Important Points
(continued)

4. **During mediation…listen actively; address problem directly, resist reacting to confrontation and emotionalism; be hard on the problem and soft on the employee; build off of each other's ideas; keep focused on the goal of improving future working environment; be tolerant, flexible and willing to change your perception once you hear all aspects of the dispute.**
5. **Avoid…Attacking; interrupting; unrealistic expectations; rigidity; labeling the other party; attaching blame.**
6. **Mediators…support self-determination; impartial; facilitate discussions between parties; help parties consider all options; place no blame; will not provide legal advice or offer a solution; abide by confidentiality rules.**
7. **EEO settlement agreement…binding contract; language should be clear to all parties; agree to only what you have control over; build a solution considering both parties' objectives; spare legal terms; be creative; set forth a benefit; can be reviewed**

For Further Information Contact

Ann Marie Lee
Resolution Alternatives Division
Employee Services Department
EEO and Employee Services Directorate
Human Resources Office (HRO), Norfolk



(757) 444-6984 /

DSN: 564

e-mail: ann.lee@navy.mil

HRO Norfolk's website:
www.hronorfolk.navy.mil

See: ADR link

DON's website: www.adr.navy.mil

Congratulations!